IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

LEYON ODELL BEACH v. SCHWAN'S SALES ENTERPRISES, INC. and CONTINENTAL CASUALTY COMPANY

Chancery Court for Robertson County
No. 13365

No. M1999-00416-SC-WCM-CV
Filed - June 13, 2000

JUDGMENT ORDER

This case is before the Court upon motion for review by Leyon Odell Beach pursuant to Tenn. Code Ann. § 50-6-225(e)(5)(B), the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference;

Whereupon, it appears to the Court that the motion for review is not well-taken and should be denied; and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Costs are taxed to the appellant, Leyon Odell Beach, and his surety, for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM

Drowota, J., Not Participating

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
(February 22, 2000 Session)

LEYON ODELL BEACH, v. SCHWAN'S SALES ENTERPRISES, INC, ET AL.

Direct Appeal from the Chancery Court for Robertson County
No. 13365 Hon Carol Catalano, Chancellor

No. M1999-00416-WC-R3-CV - Mailed April 12, 2000
Filed - June 13, 2000

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel in accordance with Tenn. Code Ann. § 50-6-225(e)(3) for hearing and reporting findings of fact and conclusions of law. In this case, the plaintiff contends the trial judge erred in finding that he was not a covered employee under the Workers' Compensation Act. As discussed herein, the panel has concluded the claimant was a gratuitous worker and that the judgment should be affirmed.

Tenn. Code Ann. § 50-6-225(e) Appeal as of Right; Judgment of the chancery court AFFIRMED

LOSER, SP.. J. delivered the opinion of the panel, in which DROWOTA, J. and GAYDEN, Sp. J.

Joseph M. Dalton, Jr. and Catherine S. Hughes, Nashville, Tennessee, for the appellant, Leyon Odell Beach..

Terry L. Hill, Manier & Herod, Nashville, Tennessee, for the appellees, Schwan's Enterprises, etc. et al .

OPINION

The claimant or appellant, Beach, is thirty years old and a high school graduate with two years of college. He has worked in the insurance business and in the music business, but apparently has no particular vocational training. In May of 1998, he was interviewed for a sales position at Schwan's Enterprises, a home delivery service. At the conclusion of the interview, he was told that the position would be offered to him if he successfully completed "ride day", the next step in the application process. Ride day was scheduled to occur on May 27, 1998.

On that day, the claimant accompanied a salesperson and observed the interaction

between him and the customers. That afternoon, as he was stepping out of the truck, he slipped and fell and was seriously injured. He was not offered the job and was not paid for the day.

Upon the above summarized evidence, the trial judge found that the claimant was not a covered employee at the time of the injury. The panel has reviewed the case de novo upon the record of the trial court, accompanied by a presumption of correctness of the findings of the trial judge, unless the preponderance of the evidence is otherwise, as required by Tenn. Code Ann. §50-6-225(e)(2).

Unless expressly excluded, every employee of a covered employer, including executives and corporate officers and officials, wage earners and salaried workers, under any actual or implied contract of hire or apprenticeship, is entitled to the benefits provided by the Act. The Act defines an employee as "every person ... in the service of an employer ... under any contract of hire or apprenticeship, written or implied." Tenn. Code Ann. §50-6-102(9)(a). In order for an injured worker to qualify for workers' compensation benefits, he must prove that, at the time of the injury, there was an expressed or implied agreement that the worker was to be compensated for his services by the alleged employer. Black v. Dance, 643 S.W.2d 654 (Tenn. 1982). Thus, it appears that a worker whose services are gratuitous is not an employee under the Act. Garner v. Reed, 856 S.W.2d 698 (Tenn. 1993). Although it appears from the record that the salesperson whom the claimant was accompanying paid for his lunch on the date of the injury, we find in the record no evidence that he was or expected to be compensated by the employer. For that reason, the evidence fails to preponderate against the findings of the trial court..

The judgment of the trial court is accordingly affirmed. Costs on appeal are taxed to the plaintiff.